

SENATE BILL 805

By Haile

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 11, relative to bail.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-11-115, is amended by deleting subsection (b) and substituting:

(b) In determining whether or not a person shall be released as provided in this section, and that a release will reasonably assure the appearance of the person as required, the magistrate shall review a form approved by the administrative office of the courts containing a matrix that includes the following factors for consideration:

- (1) The defendant's length of residence in the community;
- (2) The defendant's employment status and history and financial condition;
- (3) The defendant's family ties and relationships;
- (4) The defendant's reputation, character, and mental condition;
- (5) The defendant's prior criminal record, including prior releases on recognizance or bail;
- (6) The identity of responsible members of the community who will vouch for the defendant's reliability;
- (7) The nature of the offense and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and

(8) Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

(c) Upon making a release determination pursuant to this section, the magistrate shall reduce the magistrate's determination to writing on the form described in subsection (b), including all factors used in making the determination, sign the form, and file the form with the clerk. The clerk shall include the form in the defendant's case file.

(d)

(1) In making a release determination pursuant to subsection (a), there is a rebuttable presumption that a person charged with a bailable offense will not violate the conditions of the person's release if:

(A) The person is charged with an offense that, if convicted, would be eligible for expunction under § 40-32-101(g); and

(B) The person has not been previously convicted of an offense that is not eligible for expunction under § 40-32-101(g).

(2) A magistrate may consider the factors listed in subsection (b) in determining if the presumption created pursuant to this subsection (d) has been overcome.

(3) If a magistrate determines that the presumption created pursuant to this subsection (d) has not been overcome, the magistrate shall release the person pending trial on the person's recognizance or upon the execution of an unsecured appearance bond.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following as a new section:

40-11-154.

(a)

(1) Notwithstanding § 40-11-118, § 40-11-122, or any other law to the contrary, a defendant for whom bail has been set, pursuant to § 40-11-117, in an amount not to exceed seven thousand five hundred dollars (\$7,500), may execute a bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the sum of:

(A) Ten percent (10%) of the amount of the bail set; and

(B) The amount of any bail bond tax required under title 67, chapter 4, part 8.

(2) Upon depositing this sum, the defendant shall be released from custody subject to the conditions of the bail bond.

(3) The clerk may assess an administrative fee in the amount of ten percent (10%) of the deposit made by the defendant under subdivision (a)(1)(A), and deduct this fee upon deposit by the defendant.

(b) If the conditions of the bail bond have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the defendant, unless the court orders otherwise, the entire sum which had been deposited under subdivisions (a)(1)(A) and (B), including any administrative fee assessed by the clerk under subsection (a).

(c) Notwithstanding subsection (b), if a judgment for fine, court costs, restitution, or any combination thereof, is entered in the prosecution of a cause in which a deposit had been made by the defendant pursuant to subsection (a), the deposit must be applied to the payment of any fine, court costs, restitution, or any combination thereof, in the following manner:

(1) The deposit must first be credited toward any judgment for restitution, pursuant to § 40-20-116; and

(2) Any remaining portion of the deposit must then be credited toward any judgment for fine, court costs, or any combination thereof.

SECTION 3. Tennessee Code Annotated, Section 40-11-121, is amended by deleting the section and substituting:

If a judgment for fine, court costs, restitution, or any combination thereof, is entered in the prosecution of a cause in which a deposit had been made by the defendant, the deposit must be applied to the payment of any fine, court costs, restitution, or any combination thereof, in the following manner:

(1) The deposit must first be credited toward any judgment for restitution, pursuant to § 40-20-116; and

(2) Any remaining portion of the deposit must then be credited toward any judgment for fine, court costs, or any combination thereof.

SECTION 4. Tennessee Code Annotated, Section 40-11-120, is amended by designating the existing language as subsection (a) and inserting the following language as a new subsection:

(b)

(1) If the defendant released upon posting bail bond under § 40-11-154 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order or forfeiture shall be mailed forthwith by the clerk to the defendant at the defendant's last known address. If the defendant does not appear and surrender to the court having jurisdiction within thirty (30) days from the date of the forfeiture or, within that period, satisfy the court that appearance and surrender by the defendant are impossible and not the defendant's fault, the court shall enter judgment for the state against the defendant for the amount of the bail and

costs of the court proceedings. The deposit made in accordance with § 40-11-154 shall be applied to payment of restitution, judgment, and costs in the following manner:

(A) The deposit must first be credited toward any judgment for restitution, pursuant to § 40-20-116;

(B) Any remaining portion of the deposit must then be credited toward any costs actually incurred by a law enforcement agency that executes a warrant for the defendant's arrest for the failure to appear. The law enforcement agency must submit actual costs incurred by the agency executing the arrest warrant to the court; and

(C) Any remaining portion of the deposit must then be credited toward any judgment for fine, court costs, or any combination thereof.

(2) Any balance of the judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

SECTION 5. This act takes effect July 1, 2021, the public welfare requiring it, and applies to bond orders entered on or after that date.